
**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA**

No. 22-5069

JAMES BLASSINGAME AND SIDNEY HEMBY

Appellees,

v.

DONALD J. TRUMP

Appellant,

No. 22-7030

REPRESENTATIVE ERIC SWALWELL

Appellees,

v.

DONALD J. TRUMP, et al

Appellant,

No. 22-7031

HON. BENNIE G. THOMPSON, et al.

Appellees,

v.

DONALD J. TRUMP, et al.

Appellant.

***BLASSINGAME* PLAINTIFFS' OPPOSITION TO APPELLEES' MOTION
TO CONSOLIDATE RELATED INTERLOCUTORY APPEALS**

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*After Congressman Thompson withdrew from this action, the district court referred to the remaining Plaintiffs as the “Bass Plaintiffs.” JA 214-15.

Plaintiff-Appellees in *Blassingame v. Trump*, No. 22-5069, *Thompson v. Trump*, No. 22-7031, and *Swalwell v. Trump*, No. 22-7030 (collectively, the “*Blassingame* Plaintiffs”) respectfully request that this Court deny the *Smith* Plaintiffs’ motion to consolidate (“Motion”). Granting the Motion would be inconsistent with this Court’s standard practice and treatment of other civil cases arising out of the January 6 attack on Congress. It would also prejudice the *Blassingame* Plaintiffs and disserve judicial economy.¹ Finally, consolidation is unnecessary because the *Blassingame* Plaintiffs have already made the argument that the *Smith* Plaintiffs wish to brief.

Consolidation is procedurally inappropriate—and unnecessary—at this stage of the appeal. The Court heard oral argument in *Blassingame* on December 7, 2022. Following oral argument, the panel solicited the views of the Department of Justice, which is scheduled to file an amicus brief on March 2, 2023. Per Curiam Order (Feb. 13, 2023). When the *Blassingame* Plaintiffs file a short joint supplemental brief (contemporaneously with Appellant Trump) on March 16, briefing in the consolidated appeals will be complete.

¹ The plaintiffs in *Smith* filed their complaint in the district court on August 26, 2021, five months after the *Blassingame* plaintiffs. *Smith v. Trump*, 1:21-cv-02265-APM, Complaint (ECF #1). They then amended their complaint on December 3, 2021, only days before the district court noticed oral argument in the *Blassingame*, *Thompson*, and *Swalwell* cases. *Id.*, Notice of Hearing (Dec. 16, 2021).

Given the progress that the parties and the Court have made in *Blassingame*, this Court has chosen to hold three other civil cases arising out of the January 6 attack on Congress (all of which confront the same immunity issue as *Smith*) in abeyance pending resolution of *Blassingame*. See, e.g., *Moore v. Trump*, No. 22-7120, Clerk's Order (Oct. 20, 2022). Plaintiffs respectfully request that the Court follow the same practice—which is standard in this Circuit—for the *Smith* case. After *Blassingame* is resolved, the *Smith* Plaintiffs (like the plaintiffs in the three cases currently held in abeyance) can file a motion for summary affirmance or reversal on an expedited basis.

If the Court instead consolidates *Smith* with the *Blassingame* cases, there is a substantial risk that the parties would need to make significant amendments to the Joint Appendix (to include materials related to *Smith*), file renewed briefing, and potentially make additional oral arguments, causing extensive delays. The *Smith* Plaintiffs represent that they could file a brief within ten days of the Court's decision on its motion to consolidate, see Mot. at 13, but they do not account for the additional time that would be required for responsive briefing from Defendant Trump (who has not consented to the *Smith* Plaintiffs' proposed schedule), and potentially the *Blassingame* Plaintiffs and Department of Justice. Nor do they account for the possibility that proceedings may otherwise be extended as the result of adding several more plaintiffs, and a fourth complaint, to the consolidated

appeals. These delays would prejudice the *Blassingame* Plaintiffs, who have already waited more than two years for discovery to begin, and disserve judicial economy.

Finally, the *Blassingame* Plaintiffs have already raised the argument that the *Smith* Plaintiffs wish to make, albeit relying on different and more apt authority. Like the *Smith* Plaintiffs, the *Blassingame* Plaintiffs plead and argue that the course of conduct at issue in this case is not simply Appellant Trump's speech on January 6, but his participation in a conspiracy to attack Congress. *See* Corrected Br. of Appellees, *Blassingame v. Trump*, No. 22-5069 at 4-8, 22. The Court also raised this issue during oral argument. Recording of Oral Argument, *Blassingame v. Trump*, No. 22-5069 at 1:46:35 (Chief Judge Srinivasan stating: "there's allegations in the complaint that are beyond January 6 So even if one thought the Jan 6th speech is something that implicates presidential immunity, what about fact that there still are other things in the complaint . . . like private conversations with election officials, like planning the rally . . ."). As a result, no additional briefing is necessary to ensure this point is before the Court.

Dated: February 28, 2023

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 677 words. This motion also complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5)-(6) because it was prepared using Microsoft Word in Times New Roman 14-point font, a proportionally spaced typeface.

Dated: February 28, 2023

/s/ Joseph M. Sellers
Joseph M. Sellers

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2023, I electronically filed the foregoing document with the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: February 28, 2023

/s/ Joseph M. Sellers
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